

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WELLS FARGO BANK, N.A.,

Plaintiff,

No. C 11-03267 JSW

v.

TERESITA D. SULIT,

Defendant.

**ORDER TO SHOW CAUSE AND
VACATING CASE
MANAGEMENT CONFERENCE**

This matter appears for a case management conference set for February 24, 2012.

Neither party has submitted a case management statement. Federal courts have a duty to raise and decide issues of subject matter jurisdiction *sua sponte* at any time it appears subject matter jurisdiction may be lacking. Fed. R. Civ. P. 12; *Augustine v. United States*, 704 F.2d 1074, 1077 (9th Cir. 1983). It appears that this Court lacks jurisdiction to hear this matter.

On March 14, 2011, Plaintiff filed a complaint for unlawful detainer in San Francisco County Superior Court against Defendant Teresita D. Sulit (the “State Court action”). (*See* Notice of Removal.) On July 1, 2011, Defendant Sulit removed the State Court action on the basis that jurisdiction is premised upon a federal question. (*See id.*) “[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant ... to the district court of the United States for the district and division embracing the place where such action is pending.” *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 7-8 (1983) (citation omitted); *see also* 28 U.S.C. § 1441.

1 However, federal courts are courts of limited jurisdiction. *See, e.g., Kokkonen v.*
2 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Accordingly, the burden of
3 establishing federal jurisdiction for purposes of removal is on the party seeking removal, and
4 the removal statute is strictly construed against removal jurisdiction. *Valdez v. Allstate Ins. Co.*,
5 372 F.3d 1115, 1117 (9th Cir. 2004); *see also Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.
6 1992). “Federal jurisdiction must be rejected if there is any doubt as to the right of removal in
7 the first instance.” *Gaus*, 980 F.2d at 566.

8 “The presence or absence of federal-question jurisdiction is governed by the ‘well-
9 pleaded complaint rule.’” *Caterpillar Inc. v. Williams*, 482 U.S. 382, 392 (1987). The well-
10 pleaded complaint rule recognizes that the plaintiff is the master of his or her claim. “[H]e or
11 she may avoid federal jurisdiction by exclusive reliance on state law.” *Id.* Thus, under the
12 well-pleaded complaint rule, federal-question jurisdiction arises where the “complaint
13 establishes either that federal law creates the cause of action or that the plaintiff’s right to relief
14 necessarily depends on resolution of a substantial question of federal law.” *Franchise Tax Bd.*,
15 463 U.S. 1, 27-28 (1983).

16 The State Court action is an unlawful detainer action and, thus, federal law does not
17 create the cause of action. Moreover, the Court finds that the claim will not necessarily depend
18 upon the resolution of a substantial question of federal law, because Plaintiff need not prove
19 compliance with the federal law relied upon by Defendant to establish its claim. *See, e.g.,*
20 *Grable & Sons Metal Prods. v. Darue Eng. & Mfg.*, 545 U.S. 308, 314-15 (2005).

21 Furthermore, a court cannot exercise removal jurisdiction on the ground that the
22 complaint gives rise to a potential or an anticipated *defense* that might raise a federal question,
23 even if the defense is the only question truly at issue in the case. *Franchise Tax Board*, 463
24 U.S. at 10, 14; *see also Caterpillar*, 482 U.S. at 393 (“[I]t is now settled law that a case may *not*
25 be removed to federal court on the basis of a federal defense, including the defense of
26 preemption, even if the defense is anticipated in the plaintiff’s complaint, and even if both
27 parties concede that the federal defense is the only question truly at issue.”) (emphasis in
28 original). Therefore, the Court finds that it lacks subject matter jurisdiction to hear this matter

1 as currently pled and must remand to the state court. *See* 28 U.S.C. § 1447(c); *see also Maniar*
2 *v. FDIC*, 979 F.2d 782, 785 (9th Cir. 1992).

3 In addition, Defendant also failed to remove within thirty days of being served with the
4 complaint which serves as a bar to federal jurisdiction. *See* 28 U.S.C. § 1446 (“[t]he notice of
5 removal of a civil action or proceeding shall be filed within thirty days, by the receipt of the
6 Defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim
7 for relief”).

8 Accordingly, the Court HEREBY ISSUES this order to show cause to Defendant to
9 respond in writing by no later than **March 9, 2012** why this case should not be remanded to the
10 Superior Court of the State of California for the County of San Francisco. Should Defendant
11 fail to respond, this case shall be remanded for lack of subject matter jurisdiction. The Court
12 also VACATES the case management conference set for February 24, 2012 at 1:30 p.m.

13 **IT IS SO ORDERED.**

14 Dated: February 22, 2012



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

WELLS FARGO BANK, N.A. et al,
Plaintiff,

Case Number: CV11-03267 JSW

CERTIFICATE OF SERVICE

v.

SULIT et al,


Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 22, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Teresita D. Sulit
101 University Street
San Francisco, CA 94134

Dated: February 22, 2012


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk